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Federal Communications Commission

FCC 98-123

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
1998 Biennial Regulatory Review --)	IB Docket No. 98-96
Review of Accounts Settlement in)	
the Maritime Mobile and Maritime)	
Mobile-Satellite Radio Services and)	
Withdrawal of the Commission as an)	
Accounting Authority in the Maritime)	
Mobile and the Maritime Mobile-Satellite)	
Radio Services Except for Distress)	
and Safety Communications)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 18, 1998

Released: July 17, 1998

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement

Comment Date: August 24, 1998

Reply Comment Date: September 9, 1998

TABLE OF CONTENTS

	Paragraph Numbers
I. INTRODUCTION	1-3
II. BACKGROUND	4-12
III. DISCUSSION	13-20
A. Withdrawal of Commission as an Accounting Authority	13-16
B. Eligibility to be an Accounting Authority	17
C. "Grandfathered" Accounting Authorities	18
D. Pending Applications	19
E. Application Procedures	20
IV. PROCEDURAL MATTERS	21-28
V. CONCLUSION	29
VI. ORDERING CLAUSES	30-31
APPENDIX A--Proposed Rule Language	
APPENDIX B--Initial Regulatory Flexibility Analysis	

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking*, we propose to withdraw as a nationwide clearinghouse for settling accounts for maritime mobile, maritime satellite, aircraft, and hand-held terminal radio services. We propose instead to rely upon private accounting authorities, certified under Part 3 of the Commission's Rules¹ and operating under the regulatory oversight of Commission staff, to perform these functions. We also initiate a review of our current rules for certifying accounting authorities to ensure that the public interest will continue to be served and request comment on any changes to those rules that would be necessary or desirable. We propose to modify Section 3.10(e) to make clear that private entities certified under our rules, with certain exceptions discussed below, have a duty to deal with the public in a non-discriminatory manner. Finally, we propose to withhold action on all applications now pending before the Commission for certification as an accounting authority until the outcome of this rulemaking, and to require applicants to amend their applications to reflect any changes to our rules adopted as a result of this proceeding.

2. This proceeding is a continuation of the *Accounting Authority Rulemaking* proceeding we instituted in 1993.² In 1996 we adopted rules for the certification of private entities to serve as accounting authorities for maritime mobile and maritime satellite services.³ We also made permanent authorizations of private accounting authorities that we had issued over the years. Finally, we also provided that the Commission would continue to oversee the behavior of certified private accounting authorities to ensure that they performed their functions in accordance with our rules and that the public interest would be served. The 1996 rules provide an opportunity for the Commission to withdraw from the clearinghouse function that it has performed since 1934, and to rely solely upon certified private accounting authorities for this function.

3. Section 11 of the Communications Act of 1934, as amended, requires the Commission to review biennially all regulations applicable to the operations and activities of providers of telecommunications services to determine whether any such regulations are no longer necessary as the result of meaningful economic competition among the providers of such services.⁴ Section 11 further requires the Commission to modify or repeal any regulation no longer necessary in the public interest.⁵ The Commission is initiating this rulemaking proceeding as part of its 1998 biennial regulatory review. In this proceeding, the Commission is proposing to withdraw as an accounting clearinghouse for the settlement of accounts in the maritime, maritime mobile-satellite and other satellite-based services.

¹ 47 C.F.R. §§ 3.01 *et seq.*

² *The Establishment of Commission Rules concerning the Administration of Accounting Authorities in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications*, 8 FCC Rcd. 8680 (1993) [hereafter cited as *Accounting Authority Rulemaking*].

³ Report and Order, *In the Matter of the Establishment of Commission Rules Concerning the Administration of Accounting Authorities in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications*, 11 FCC Rcd. 4692 (1996) [hereinafter *1996 Report and Order*].

⁴ 47 U.S.C. § 161(a).

⁵ *Id.* at § 161(b).

The Commission believes that its function as an accounting clearinghouse is no longer necessary and that its withdrawal from performing this function will serve the public interest.

II. BACKGROUND

4. International telecommunications settlements for maritime radio involve the collection and payment by various accounting entities of charges due foreign administrations from messages transmitted at sea by or between maritime mobile and maritime mobile-satellite stations located on board ships subject to U.S. registry and utilizing foreign coast and earth-station facilities. The entities that perform this settlement function are referred to as accounting authorities. Historically, most countries have required individual ships to settle their own accounts with foreign administrations and coast stations. In the United States, however, the U.S. Government has elected to provide a nationwide accounting authority for settling maritime mobile service message charges since 1913 and, more recently, for maritime satellite service messages.

5. In order to comply with its treaty obligations under the Berlin-Telegraph Convention of 1906 and the London Radiotelegraph Conference of 1912, the United States established a clearinghouse to maintain accounts with each foreign administration concerned with U.S. flag vessels operating in international or foreign waters. After various changes in administrative authority within the U.S. Government, the international radio accounts were transferred to the jurisdiction of the FCC in 1934.⁶ Since that time, the Commission has acted as a nationwide clearinghouse for the settlement of accounts for maritime, aircraft and hand-held terminal radio services. The Commission has also acted as clearinghouse for other federal agencies. Originally, the settlement functions applied solely to telegraph messages between ships and shore stations. Over the years, however, new services and new technologies, such as satellite communications, have caused the mix of activity to shift significantly. Today, maritime mobile radio services only account for about six per cent of the FCC's clearinghouse functions. Satellite-based services, including aeronautical and hand-held terminals, now account for 94 per cent of the FCC's activity.

6. Various international conventions and rulemakings have addressed the issues of international telecommunications accounting and settlements, including the International Telecommunication Convention,⁷ the International Telecommunications Regulations⁸, the ITU Radio Regulations⁹, and the ITU-T Recommendations.¹⁰ The 1979 World Administrative Radio Conference

⁶ On June 10, 1934, pursuant to the Communications Act of 1934, the Federal Communications Commission absorbed the Federal Radio Commission. Title VI, Sections 603 ad 604, of the Act provided that the employees, records, property, authorities and appropriations of the Radio Commission should be transferred to the FCC. These included the international radio accounts that the Radio Commission at that time administered.

⁷ International Telecommunication Union, Final acts of the Additional Plenipotentiary Conference, Convention of the International Telecommunication Union, Article 37 (Edition Geneva, 1992).

⁸ International Telecommunication Union, Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88), International Telecommunication Regulations, Article 6 (Melbourne, 1988).

⁹ International Telecommunication Union, Final Acts of the World Administrative Radio Conference (WARC-79), International Radio Regulations, Chapter XI (Geneva, 1979) [hereafter cited as International Radio Regulations].

sought to improve the efficiency of the billing process for handling international settlements between individual ship owners and foreign administrations or coast stations. The International Radio Regulations adopted at that Conference allow for three alternative methods for collecting charges for radio communications, as follows: by the administration that has issued the license; by a recognized private operating agency; or by any other entity or entities designated for this purpose by the administration that issues licenses.¹¹ The FCC has used a combination of all three alternatives. The procedures delineated in the ITU-T Recommendations allow each administration to establish up to 25 accounting authorities.¹²

7. The FCC is currently one of 18 accounting authorities recognized to settle accounts with foreign telecommunications operators for U.S. vessels. The organization within the FCC responsible for this function is the International Telecommunications Settlements (ITS) Section of the Financial Operations Division, Office of Managing Director. The FCC's ITS Section also settles accounts for aircraft and hand-held radio services. The settlement operation consists of examining and processing invoices received from foreign administrations and billing U.S. entities for the charges due the foreign country.¹³

8. The FCC, in accordance with international procedures, has also permitted private entities called "accounting authorities" to settle accounts between U.S. registered ships and foreign administrations, performing the same settlement functions as does its ITS Section.¹⁴ The settling of accounts for U.S.-flag vessels by private entities as well as by the FCC typically involves an administrative fee.¹⁵ The FCC has assigned each private accounting authority operating in the United

¹⁰ The ITU-T refers to the ITU Telecommunication Standardization Sector, the ITU body that adopts Telecommunications Recommendations. Recommendations are not binding on ITU Member countries but in effect serve as the technical, operational and service standards for international telecommunications. The ITU-T is the successor to the CCITT, the acronym for the French language name for the International Telegraph and Telephone Consultative Committee. Procedures governing accounting for maritime mobile services is set forth in International Telecommunication Union, ITU-T Recommendation D.90, Division L, Fascicle II.1 (Geneva, 1992) [hereafter cited as ITU-T Recommendation D.90].

¹¹ International Radio Regulations, Article 66, Resolutions 5086-89. *See also* ITU-T Recommendation D.90, Article 1.1 (L1-L4) (Geneva, 1992).

¹² ITU-T Recommendation D.90, § 1.4 (L7).

¹³ In Fiscal Year 1997 the Commission's ITS Section processed 11,368 invoices, representing 559,841 messages. By way of comparison, in Fiscal Year 1996 the ITS Section processed 6,747 invoices, representing 390,116 messages. In the first eight months (October 1997 through May 1998) the ITS Section has processed 6,686 invoices, representing 293,900 messages.

¹⁴ *See In The Matter of Accounting and Operating Procedures in the Maritime Mobile Service*, FCC 80-741, Mimeo No. 28600 (released December 12, 1980). The Commission certifies U.S. accounting authorities under ITU-T Recommendation D.90, Annex A. Recommendation D.90 provides that governments should certify no more than 25 accounting authorities. *Id.* at § 1.4 (L7).

¹⁵ The FCC used to perform its accounting authority function at no cost to the licensees. However, under Section 8(g) of the Communications Act, 47 U.S.C. § 158(g), the FCC established an administrative fee of \$2.00 per line item (*i.e.*, per call or message) all ITS Section billings. Under Section 8(d)(1) of the Act the Commission does not charge the administrative fee to other U.S. governmental agencies for settling their accounts. Vessel

States its own Accounting Authority Identification Code (AAIC), which is used by ships and foreign coast stations to identify where charges for messages transmitted through foreign facilities are to be sent for collection.¹⁶

9. Before the release of the *1996 Report and Order*, the Commission, in addition to itself, had allowed seven privately owned, U.S.-based entities¹⁷ to operate as U.S. accounting authorities, subject to the oversight of the Commission. The Commission assigned each of them a U.S. AAIC, a process it called "interim certification." Additionally, the Commission certified seven foreign-owned entities, each of which had been certified by its home government as an accounting authority in that country,¹⁸ to settle accounts for U.S.-flag vessels. The Commission did not assign such foreign authorities U.S. AAICs.

10. The *1996 Report and Order* provided an application and approval process to guarantee continued performance by the preexisting accounting authorities operating under interim certification, and it sought to encourage new entities to become certified to settle charges as certified accounting authorities. Following the release of the *1996 Report and Order*, the Commission received applications in compliance with the new rules from five of the seven private entities that had held interim certifications as U.S. accounting authorities¹⁹ and six foreign-owned entities.²⁰ In 1997 the

operators/licensees choosing to have private entities settle their accounts are generally also charged a fee under some sort of contractual arrangement.

¹⁶ Under ITU-T Recommendation D.90 (Annex A), all accounting authorities are designated by a discrete four-character alpha-numeric code that is unique to each country. The AAICs for accounting authorities operating within the United States are assigned codes with a "US" prefix, followed by a two-digit number. The current U.S.-certified accounting authorities, and their AAICs, are as follows: Federal Communications Commission (US01); Mackay Communications Inc. (US02); Radio-Holland Communications, Inc. (US03); Seven Seas Communications, Inc. (US04); KFS World Communications (d/b/a Globe Wireless) (US06); 7 Cs Ltd (US07); Mobile Marine Radio, Inc. (US08); EXXON Communications Company (US10); Raytheon Service Company (US12); and Global Communications Corporation (US14). While Global is still listed as a certified accounting authority, it did not submit the application for permanent certification as required by the *1996 Report and Order*. Under the terms of that order the interim certification of an accounting authority that did not apply was automatically canceled 60 days after the effective date of the Order.

¹⁷ The interim U.S. accounting authorities were Mackay Communications, Inc.; Radio-Holland Communications, Inc.; SAIT Communications, Inc.; Mobile Marine Radio, Inc.; Exxon Communications Company; Raytheon Service Company; and Global Communications, Inc.

¹⁸ The interim foreign accounting authorities were Kelvin Hughes (United Kingdom); Peninsular Electronics, Ltd. (U.K.); STC International Marine, Ltd. (U.K.); The Marconi International Marine Co., Ltd. (U.K.); E.B. Communications (Great Britain) Ltd. (U.K.); International Radio Traffic Services, Ltd. (Ireland); and ANDgat, Ltd. (Gibraltar).

¹⁹ Those filing applications were Mackay Communications, Inc.; Radio-Holland Communications, Inc.; Mobile Marine Radio, Inc.; Exxon Communications Company; and Raytheon Service Company. A sixth interim accounting authority, SAIT Communications, Inc., did not seek permanent certification because it has been merged into Radio-Holland and surrendered its AAIC. The seventh interim U.S. accounting authority was Global Communications Corporation, which, as indicated in note 16, *supra*, did not file an application for permanent certification.

Commission, under the new certification rules, made permanent the interim certification of those five U.S. and three of the foreign-owned applicants.²¹ After the release of the 1996 Report and Order the Commission also received applications from six additional entities seeking Commission certification as U.S. accounting authorities and from one additional foreign-owned accounting authority seeking to settle traffic for U.S. vessels.²² The Commission granted three of the applications from U.S.-based entities,²³ denied certification to two U.S. applicants,²⁴ and one U.S. application is still pending.²⁵ Finally, on September 22, 1997, the Commission granted the application from the Russian entity, Morsviazspudnik.²⁶

11. The rules the Commission adopted in the *1996 Report and Order* clarified the standards of conduct required for U.S. settlement activity. The rules also provided a formal structure for certifying accounting authorities on a permanent basis and specified that only qualified applicants would be certified to perform the accounting authority function. In addition, the *1996 Report and Order* sought to promote the improvement of operational procedures and reporting standards to assist the FCC in monitoring overall settlement functions to protect the U.S. public interest.

²⁰ Those filing applications were Kelvin Hughes (UK); Peninsular Electronics Ltd. (UK); The Marconi International Marine Co., Ltd. (UK); International Radio Traffic Services, Ltd. (Ireland); ANDgat, Ltd. (Gibraltar); and NERA, Ltd. (UK). NERA, Ltd., is a company formed from the merger of E.B. Communications (Great Britain) Ltd. and STC International Marine, Ltd., STC surrendered its AAIC of GB07 and the merged company uses E.B. Communications' code of GB11.

²¹ By Public Notice (Mimeo 73256), dated April 3, 1997, the Commission announced the following eight permanent certifications: Mackay Communications, Inc., Radio-Holland Communications, Inc., Mobile Marine Radio, Inc., Exxon Communications Company, Raytheon Service Company, Kelvin Hughes, The Marconi International Marine, Ltd., and Peninsular Electronics, Ltd. The applications of ANDgat International, Ltd., International Radio Traffic Services, Ltd., and NERA, Ltd., are still pending. Because these interim authorities' applications were timely filed, they can continue to operate under their interim certifications until the Commission acts on their applications. The Commission's rules for certifying accounting authorities do not state a term for a permanent certification. Rather, certifications continue indefinitely, unless surrendered by an accounting authority or terminated by the FCC. See 47 C.F.R. §§ 3.1-3.76.

²² The applications for certification as U.S. accounting authorities were filed by AquaCom, Inc.; Cruise Phone, Inc.; KFS World Communications, Inc. (d/b/a Globe Wireless); Seven Seas Communications, Inc.; Stratos Mobile Networks; and 7 Cs, Ltd. The foreign-owned applicant was Morsviazspudnik, an entity certified by Russia and holding the Russian AAIC SU04.

²³ By Public Notice (Mimeo 76274), dated August 29, 1997, the Commission granted certification to Seven Seas Communications, Inc., and KFS World Communications, Inc. (d/b/a Globe Wireless). By Public Notice (Mimeo DA-2107), dated September 30, 1997, the Commission granted certification to 7 Cs Ltd.

²⁴ By letter dated July 10, 1997, the Commission denied the application of AquaCom, Inc. and by letter dated July 18, 1997, the application of CruisePhone, Inc. These applications were denied because they failed to provide the evidence of financial ability to act as an accounting authority required by Section 3.24 of the Commissions Rules, 47 C.F.R. § 3.24.

²⁵ That applicant is Stratos Mobile Networks.

²⁶ See Public Notice (DA 97-2107), dated September 30, 1997.

12. The *1996 Report and Order* included in the eligibility requirements for accounting authorities a requirement that all registered accounting authorities treat all U.S. licensed vessels in a non-discriminatory manner.²⁷ We stated that the public interest is not served when an accounting authority settles accounts for itself only.²⁸ We did, however, waive the requirement to serve all comers for accounting authorities, whom we labeled "grandfathered," that wished to continue to settle accounts only for their own radio-service customers. In doing so, we stated that, in the event all 25 U.S. AAICs were issued, we reserved the right to require all accounting authorities to serve the public indiscriminately or to relinquish their certifications. We further provided, however, that any new entities that may be certified would be required to serve the public generally.²⁹ At present the only entity that has taken advantage of our grandfathering option is EXXON Communications Company, which settles traffic only for vessels owned by EXXON. This leaves seven other U.S. and four foreign entities to which the Commission has granted permanent accounting-authority certifications that are required to serve all comers. If the FCC eventually withdraws as a U.S. accounting authority, it will have certified 11 (seven U.S. and four foreign) private accounting authorities. Because ITU-T Recommendation D.90 provides for the Commission to certify up to 25 accounting authorities, we would be able to certify 14 additional authorities.³⁰

III. DISCUSSION

13. **Withdrawal by the Commission from Accounting Authority Function.** In this *Notice* the Commission proposes to withdraw from performing the functions of an accounting authority. Our proposal to withdraw from the clearinghouse functions includes all services for which the FCC now provides clearinghouse service. The certification of private accounting authorities and the prescription of rules to guide the conduct of such authorities, particularly the requirement to deal with the public non-discriminatorily, will ensure that the settling of maritime radio accounts will occur in an orderly fashion and will remove any need for the Commission to continue to provide that function. Because the mix of traffic for which the Commission provides clearinghouse service has shifted to include many services other than traditional maritime services, the Commission has extended its previously adopted rules to include settlements for satellite-based aeronautical and hand-held terminals. Our rules on designating private accounting authorities now cover all mobile services. We anticipate that new services that may be introduced in the future will also rely upon the private accounting authorities that we have and will authorize, without requiring the Commission to re-enter the field of providing clearinghouse functions. Privatization will promote competition in all communications markets, including the settlement of maritime radio accounts.

²⁷ This rule is embodied in Section 3.10(e) of our Rules, which requires that "[a]ll applicants must be willing to offer their services to the public at a reasonable charge." 47 C.F.R. §3.10(e).

²⁸ See 11 FCC Rcd at 4694-5, para. 16.

²⁹ *Id.* at 4695.

³⁰ ITU-T Recommendation D.90, § 1.4 (L7) provides that the number of accounting authorities "shall be limited as far as possible and should not exceed 25." Because Recommendations are not legally binding, it would be possible for the United States to name more than 25 accounting authorities if that became necessary. The binding Radio Regulation under which Recommendation D.90 was promulgated provides only that number of authorities "shall be limited as far as possible . . .," without specifying a particular number. ITU Radio Regulations, Art. 66, § 4 (5091).

14. Our rules on accounting authorities will help ensure that the public interest is protected. To further this goal, the Commission will continue to operate as the administrator of all U.S.-certified accounting authorities. The basic rules and procedures for applications, services, and procedures will continue to govern, as described in Part 3 of the Commission's Rules³¹ and as discussed in the *1996 Report and Order*.³² We note, however, that other federal agencies have depended upon the FCC for settlements of their maritime radio and maritime satellite accounts. Such agencies may have special needs that cannot be met by relying upon a private accounting clearinghouse. Therefore, while we propose to withdraw from all clearinghouse activities, we specifically request governmental agencies to comment on this proposal and whether they have any special needs that would require us to continue to serve as a clearinghouse for government agencies. We propose to insure that the interests of all users who will rely upon private accounting authorities are protected by mandating compliance with the procedures detailed below.

15. In considering our proposal to withdraw as an accounting authority, we have reviewed our accounting authority rules and have concluded that they generally provide an adequate basis for certifying private accounting authorities and ensuring that such authorities serve the public in a fair and reasonable manner. The rules provide clear standards for whom may be certified as an accounting authority and the duties it must fulfill. As is clear from our 1996 Report and Order, Section 3.10(e) of our Rules, which requires that applicants for accounting authority certification must "be willing to offer their services to the public at a reasonable charge,"³³ accounting authorities must serve the public on a reasonable and non-discriminatory basis. We believe that our Report and Order shows a clear intent that private accounting authorities should conduct their accounts-settlement business in a manner similar to that of a common carrier. That is, such authorities should provide service to anyone making a reasonable request for service, without undue or unjust discrimination, and should impose charges for their services that are reasonable and non-discriminatory. However, to make these obligations more explicit, we propose to amend the first sentence of Section 3.10 to read as follows:

Section 3.10(e). Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and charge reasonable and non-discriminatory fees for service.

The remainder of section 3 will remain the same. We believe that this change does not alter the substance of the obligation already created by Section 3.10(e) but only clarifies the intent of the existing rule. We seek comment on this proposal.

16. **Accounting Authority of Last Resort.** Historically, the FCC has acted as the accounting authority of last resort; that is, foreign telecommunications operators have sent to the Commission all accounts where the customer has not designated a specific accounting authority. If the Commission withdraws from acting as an accounting authority, it will be necessary to provide an alternative mechanism. One alternative might be to designate one private accounting authority as the new authority of last resort. The Commission could do this by requesting accounting authorities wishing to serve this function to file applications for designation as the authority of last resort. The

³¹ 47 C.F.R., Part 3, §§ 3.1-3.76.

³² See *1996 Report and Order*, 11 FCC Rcd at 4692-4.

³³ 47 C.F.R. §3.10(e).

Commission could then select one of the applicants and notify the ITU of its selection. Implementation of this option might require the Commission to develop formal criteria on which to judge the ability of an applicant to serve as an accounting authority of last resort. Another alternative might be to require customers to pre-subscribe to an accounting authority or to designate an authority on every message. The Commission could do this by issuing a Public Notice to shipowners and users of other satellite terminals that they must enter into an agreement with a private accounting authority for settling their traffic and that they will not be able to use a foreign shore station or other radio service provider unless they have done so. Still another alternative might be to develop a formula for distributing messages without a designated authority among several private accounting authorities. Such a formula would presumably provide for a rotation among each U.S. accounting authority that elects to participate in such a formula. While a formula would make it easier for the customer, and would yield a fair distribution of messages among authorities, it would require an administrator and could increase the cost of the accounts-settlement function. There may be other options that commenting parties might wish to suggest. We seek comment on this issue as well.

17. **Eligibility.** The Commission does not propose in this rulemaking to alter the basic eligibility requirements issued with regard to new entries to the accounting authority function now contained in 47 C.F.R. § 3.10(e), which requires that all applicants serve the public indiscriminately. All pending and future applicants are subject to this requirement, and this *Notice of Proposed Rulemaking* proposes no more than that the applicants declare these intentions formally within their applications as described in the application procedures.³⁴

18. **"Grandfathered" Accounting Authorities.** In our *1996 Report and Order*, we made an exception to the requirement in Section 3.10(e) of our rules that private accounting authorities certified under our rules must deal with the public on a non-discriminatory basis for those entities that already held interim certification as accounting authorities and argued that they are only able to provide settlement services for their own ships. We allowed these entities to seek "grandfathered" status under our rules to continue their prior pattern of activities. Only one entity, EXXON, availed itself of this option. We created this category because EXXON had served as an accounting authority only because it owns and operates the vessels for which it settles charges. EXXON argued that it does not seek or derive a profit from performing the functions of an accounting authority, and thus does not want to enter the business of providing account-settlement services to non-affiliated entities. Although we believe that the public interest is best served when service is widely available, we recognize that it could pose a hardship on some entities were we to impose such a requirement on them after they have already begun to act as an accounting authority on a limited basis. Furthermore, we believe that the other 16 private accounting authorities that we have currently certified under our rules, who are required to deal with all comers, will ensure the public of adequate accounts-settlement services at reasonable charges. We, therefore, propose to maintain the status of this grandfathered entity and continue to exempt it from the requirement to deal with the public at large. As we also noted in our *1996 Report and Order*, however, should all 25 of the AAICs available to the United States be assigned, we reserve the right to require a grandfathered entity to serve the public indiscriminately or to surrender its AAIC for reassignment to one who will do so.³⁵ We propose to retain this reservation in the regulation of private accounting authorities established in this proceeding. We seek comment on this proposal.

³⁴ 47 C.F.R. §3.20. See para. 19, *infra*.

³⁵ 11 FCC Rcd at 4695, para. 16.

19. **Pending applications.** We seek to ensure that all vessels continue to be guaranteed non-discriminatory access to account-settlement services. Because our rules for certifying additional private entities require them to perform the function of accounting authority for any and all customers seeking service, we believe that our rules, supplemented by the proposals of this *Notice of Proposed Rulemaking*, will ensure that the privatization of the functions now performed by the Commission's ITS Section will continue to serve the public interest. However, because the applicants that have applications for accounting authority certification pending before us did not have knowledge of the changes we here propose, we believe the public interest would be served by giving them an opportunity to amend their applications to show how they propose to fulfill the non-discrimination obligation and to allow members of the public to address these entities' ability to perform that function. We seek comment on this proposal.

20. **Application Procedures.** The application referred to in the Maritime and Maritime Satellite Radio Services Regulations, FCC Form 44, "Application For Certification As An Accounting Authority," currently contains a general Qualifications section that does not specifically require the applicant to certify that it intends to conduct settlements on a non-discriminatory basis. We propose to require all applicants with accounting-authority applications pending before the Commission to amend their Form 44 submissions specifically to affirm that they will serve all customers requesting their services on a non-discriminatory basis. We propose to require that any such amendments be filed within 60 days of the release of a Report and Order in this proceeding. This *Notice* also serves to notify persons who may in future file applications for certification as an accounting authority that they will be required to serve all customers on a non-discriminatory basis. This *Notice* proposes merely to require applicants formally to affirm in their applications their willingness to abide by that requirement. The Commission proposes to process as a group all applications that meet the requirements of this rule that are received by the Commission within 60 days after the release of a *Report and Order* in this proceeding. We seek comment on these proposals.

IV. PROCEDURAL MATTERS

21. **Ex Parte.** This is a non-restricted (*i.e.*, permit-but-disclose) notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206. Persons making oral *ex parte* presentations are reminded that memorandums summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

22. **Regulatory Flexibility Act.** As required by the Regulatory Flexibility Act³⁶, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals contained in the *Notice of Proposed Rulemaking*. The IRFA is set forth in the attached Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory

³⁶ 5 U.S.C. § 603.

Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administrations in accordance with the Regulatory Flexibility Act.

23. **Initial Paperwork Reduction Act of 1995 Analysis.** This *Notice of Proposed Rulemaking* contains a proposed information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Notice of Proposed Rulemaking*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 30 days from the date of publication of this *Notice of Proposed Rulemaking* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

24. **Notice and Comment Provision.** Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1997), interested persons may become parties to this proceeding by filing comments on these proposals on or before August 24, 1998, and reply comments on or before September 9, 1998. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the Commission's reliance on such information is noted in the Report and Order.

25. Parties in this proceeding may file comments and replies on paper or electronically. Under Section 1.419 of the Commission's Rules, 47 C.F.R. § 1.419, parties filing comments on paper must file an original and four copies of all comments, reply comments, and supporting documents. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Persons who wish to participate informally may submit two copies of their comments, stating thereon the docket number of this proceeding. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M St., N.W., Room 222, Washington, D.C. 20554. Additionally, parties must file a copy of their comments, replies and supporting documents with the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., N.W., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at that address. For additional information about this proceeding, please contact John Copes at (202) 418-1478.

26. Pursuant to Section 1.49(f) of the Commission's Rules, 47 C.F.R. § 1.49(f),³⁷ Parties may file their comments, replies and supporting documents in electronic form via the Internet. Such parties should use the Commission's Electronic Comment Filing System, which they can access using the following Internet address:

<<http://www.fcc.gov/e-file/ecfs.html>>

Further information on the process of submitting comments electronically is available at <<http://www.fcc.gov/e-file/>>. Pursuant to Section 1.419(d) of the Commission's Rules, 47 C.F.R. §

³⁷ See Electronic Filing of Documents in Rulemaking Proceedings, Appendix B, pp. 21-2, FCC 98-56 (Report and Order released April 6, 1998)

1.419(d), Parties need file only one copy of an electronic submission. In completing the transmittal screen, a party filing a comment, reply or supporting document should include his or her full name, U.S. Postal Service mailing address and the lead Docket number for this proceeding, which is IB Docket No. 98-96. The Commission will consider electronically filed comments that conform to the guidelines of this section part of the record in this proceeding and accord them the same treatment as comments filed on paper.

27. Parties filing comments, replies and supporting documents on paper must also file their submissions on diskette. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format, using MS DOS and Word Perfect 5.1 for Windows or compatible software. The diskette should be submitted in "read only" mode. The diskette should be clearly marked with the party's name, the proceeding to which it is addressed (in this case, IB Docket No. 98-96), the type of pleading (comment or reply) and the date of submission. The diskette should be accompanied by a cover letter setting forth the same information. Each diskette should contain only one party's pleading, preferably in a single electronic file. The party should submit one copy of the diskette to John Copes, International Bureau, Telecommunications Division, 2000 M St., N.W., Room 844, Washington, D.C. 20054. The party should file an exact copy of the diskette, identically marked, with the Commission's copy contractor, International Transcription Service, Inc., at the address shown above in paragraph 25.

28. Persons wishing to comment on the proposed and/or modified information collections should file written comments on or before August 24, 1998. The Office of Management and Budget (OMB) must submit its written comments on the proposed and/or modified information collections, if any, on or before 60 days after the date of publication of the summary of this Notice of Proposed Rulemaking in the Federal Register. In addition to filing comments with the Secretary, they should also submit a copy of any comments on the information collections contained herein Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

V. CONCLUSION

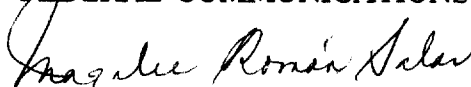
29. The Commission is proposing these rules to clarify the public service requirements for all those pending applicants and all future entities who may wish to serve as accounting authorities for the settlement of international radio maritime accounts involving U.S. registered vessels operating in foreign or international waters. By these rules, the Commission seeks to ensure that the public interest is adequately served as the Commission withdraws from its function as an accounting authority for non-governmental users of maritime mobile and maritime mobile-satellite radio services. We seek comment on the proposed changes to the application procedure and any alternatives interested persons may wish to suggest.

VI. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 11, 201-205 and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. §§ 154(i), 154(j), 161, 201-205 and 303(r)), that this *Notice of Proposed Rulemaking* is hereby adopted.

31. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A

Proposed Changes to 47 C.F.R. Part 3 of the Commission's Rules

Part 3 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations) is amended as follows:

1. The authority citation for Part 3 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 303(r).

**PART 3-AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN
MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES**

2. The Table of Contents for Part 3 is unchanged
3. Section 3.10 is proposed to be amended by revising the first sentence of paragraph (e) to read as follows:

(e) Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and charge reasonable and non-discriminatory fees for service.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),³⁸ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* provided above in para. 24. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register. See *id.*

1. Need for and Objectives of the Proposed Rule: The objective of this proceeding is to strengthen and improve the competitiveness of private accounting authorities. The proposals also seek to ensure that greater reliance upon private accounting authorities continues to serve the public interest by ensuring that, with the exception of one grandfathered entity, all private accounting authorities abide by their duty to serve the public indiscriminately and that all charges for their services are reasonable.

This *Notice of Proposed Rulemaking* (NPRM) proposes to amend Section 3.10 of the Commission's Rules, 47 C.F.R. §3.10 (1997), to clarify that it obligates private accounting authorities certified by the Federal Communications Commission to deal with the public on a non-discriminatory basis. We do not believe that this changes the substance of the rule the Commission adopted in 1996, but believe that it is desirable to make private accounting authorities' obligations as clear as possible.

This *Notice of Proposed Rulemaking* also proposes to continue an exemption for one entity that had previously been certified as an accounting authority on an interim basis, allowing it to continue to provide account-settlement services only for its own vessels. This entity had obtained interim certification before the Commission imposed an obligation for accounting authorities to provide service to all customers requesting it, and the Commission believes it would work an undue hardship to require it to change its method of operation. We believe that the public has adequate opportunity to obtain service from the other private accounting authorities the Commission has certified, and therefore there is no reason at this time to require this entity to serve all comers.

Finally, the *Notice of Proposed Rulemaking* proposes that the Commission will cease to act as an accounting authority, leaving the settlement of maritime and satellite accounts solely to the private accounting authorities it has authorized. We believe that such action will strengthen the system of private accounting authorities the Commission has created over the years and allow such authorities to become more competitive. We do not see a need for a governmental body to perform the account-settlement functions, because these functions have been performed without difficulty by a variety of private authorities, operating under FCC rules, for many years. The Commission has noted, however, that other U.S. government agencies rely upon the Commission to settle their accounts. Even with respect to these governmental entities, we are not certain there is a need for the Commission to

³⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 603 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

provide their account settlements. We have, therefore, asked the government agencies to comment whether they have special needs that can only be met by use of a governmental accounting authority.

Given that the only change from existing practice that is proposed here is the withdrawal of the Commission as an accounting authority, we also seek comment whether it is appropriate for us to issue a Regulatory Flexibility Certification that our proposals pose no significant possible effect on small businesses.

2. Legal Basis: This Notice of Proposed Rulemaking is adopted pursuant to Sections 1, 4(i), 4(j), 11, 201-205, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 161, 201-205, and 303(r).

3. Description and Estimate of Small Entities Subject to the Rules: The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.³⁹

According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.⁴⁰ The Census report does not provide more precise data. The rules proposed in this Notice of Proposed Rulemaking, however, apply only to entities providing account-settlement services for maritime mobile and maritime mobile-satellite radio services. As noted, there are currently only 17 such entities. Small businesses may be able to become accounting clearinghouses, as the establishment of such a function does not appear to involve high implementation costs.

4. Reporting, Recordkeeping, and Other Compliance Requirements: The proposed action in this *Notice of Proposed Rulemaking* would affect those entities already certified and those applying for certification as a private accounting authority in the maritime mobile, maritime mobile-satellite, aeronautical and other satellite-based radio services. The amended rule, however, merely clarifies an existing requirement imposed on accounting authorities. It, therefore, does not alter the reporting, recordkeeping or other compliance requirements of certified accounting authorities.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered: As noted above, we here attempt to strengthen and improve the competitiveness of private accounting authorities. We seek to do this by removing the government from the performance of accounts-settlement functions, leaving that function to private accounting authorities. We seek comment on the impact of our proposals on small entities and on any possible alternatives that could minimize the impact of our rules on small entities.

6. Federal Rules that Overlap, Duplicate or Conflict with These Proposed Requirements: None.

³⁹ 13 CFR § 120.121, SIC code 4899.

⁴⁰ 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

Separate Statement of Commissioner Harold W. Furchtgott-Roth**In re: Notice of Proposed Rulemaking****1998 Biennial Regulatory Review, Review of Accounts Settlement in
Maritime Mobile and Maritime Mobile Satellite Services****IB Docket No. 98-96**

I support adoption of this Notice of Proposed Rulemaking. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review *all* regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- captioned "Biennial Review" -- requires only that the Commission "*determine* whether any such regulation is no longer necessary in the public interest." (emphasis added). It is pursuant to Subsection 11(b) -- entitled "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rulemaking proceedings, need not necessarily be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rulemaking proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

* * * * *